



266-15

Nassau County  
Office of Management & Budget

**Staff Summary**

<b>Subject</b> Supplemental Appropriation
<b>Department</b> Office of Management & Budget
<b>Budget Analyst</b> Mathew Ronan <i>MR</i>
<b>Deputy Director</b> Robert Conroy <i>[Signature]</i>
<b>Budget Director</b> <i>[Signature]</i>

<b>Date</b> 6-23-15
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>

Proposed Legislative Action					
	To	Date	Approval	Info	Other
	Assgn Comm				
	Rules Comm				
	Full Leg				

Internal Approvals			
Date & Initials	Approval	Date & Initials	Approval
	Dept. Head	7/1/15 <i>[Signature]</i>	Counsel to C.E.
<i>[Signature]</i>	Budget		County Atty.
7/2/15 <i>[Signature]</i>	Government Relations	7/2/15 <i>[Signature]</i>	County Exec.

**BAPK15000001****Purpose:**

To supplementally appropriate funds into the following department as per the attached ordinance and back-up materials.

	APPROPRIATION
<b>DEPARTMENT OF PARKS, RECREATION &amp; MUSEUMS - American Armor Museum</b>	\$ 100,000

**Discussion:**

This proposed ordinance includes the following supplemental appropriation, the back-up memoranda for which are annexed hereto according to the following index:

**DEPARTMENT OF PARKS, RECREATION & MUSEUMS - American Armor Museum**

This item appropriates \$100,000 in funds granted by New York State Urban Development Corporation to cover a portion of construction costs for curbs and pedestrian walkways at the Museum of American Armor in Bethpage, New York.

**Impact on Funding**

These supplemental appropriations will have no net impact on the budget since they will recognize an equal amount of revenue and expenditure.


Recommendation: Approve Ordinance

80 JUL - 2 2015

RECEIVED  
NASSAU COUNTY  
CLERK OF THE BOARD OF SUPERVISORS

ORDINANCE NO. -2015

AN ORDINANCE SUPPLEMENTAL TO THE ANNUAL APPROPRIATION  
ORDINANCE IN CONNECTION WITH THE DEPARTMENT OF PARKS, RECREATION &  
MUSEUMS.

APPROVED AS TO FORM  
  
Deputy County Attorney

RECEIVED  
NASSAU COUNTY  
CLERK'S OFFICE  
2015 JUL -2 PM 11:08

WHEREAS, Nassau County has received certain revenue; and  
WHEREAS, such funds have not been otherwise appropriated; and  
WHEREAS, the County Executive, by communication dated June 25, 2015 addressed to  
the County Legislature, has recommended the appropriation of such funds not otherwise  
appropriated; and,

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WHEREAS, this supplemental appropriation is within the scope of Section 307 of the  
County Government Law; now, therefore,

BE IT ORDAINED by the County Legislature of the County of Nassau, as follows:

Section 1. There is hereby appropriated from monies not otherwise appropriated, the  
following sums of money to the following accounts:

<u><b>TOTAL AMOUNT</b></u> (in dollars)	<u><b>SOURCE OF FUNDS</b></u>	<u><b>APPROPRIATED TO:</b></u>			
		<u><b>FUND</b></u>	<u><b>DEPT. CODE/Index</b></u>	<u><b>OBJ. CODE</b></u>	<u><b>AMOUNT</b></u> (in dollars)
100,000	New York State Urban Development Corporation	GRT	PK	DE	100,000

§ 2. This ordinance may be modified to allow for the correction of any mathematical and/or typographical errors subsequent to any approval and adoption of said ordinance without the necessity for a vote to be taken by the County Legislature or by the members of any Standing Committee of said Legislature if said ordinance is passed by the affirmative vote of a majority of said Legislature.

§ 3. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that this supplemental appropriation ordinance is a "Type II" Action within the meaning of Section 617.5(c)(20) of 6 N.Y.C.R.R. ("routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment"), and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

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§ 4. This ordinance shall take effect immediately.

**EDWARD P. MANGANO**  
County Executive



**CARNELL T. FOSKEY**  
County Attorney

## **County of Nassau Inter-Departmental Memo**

**To:** Clerk of the County Legislature  
**From:** County Attorney  
**Date:** June 25, 2015  
**Subject:** **ORDINANCE - ORIG. DEPT. – Office of Management and Budget**

AN ORDINANCE supplemental to the annual appropriation ordinance in connection with the Department of Parks, Recreation and Museums.

The above-described document attached hereto is forwarded for your review and approval and subsequent transmittal to the County Legislature for inclusion upon its calendar.

CARNELL T. FOSKEY  
County Attorney

A handwritten signature in cursive script, appearing to read "Samantha A. Goetz", is written over a horizontal line.

Samantha A. Goetz  
Deputy County Attorney  
Bureau of Appeals and Opinions

Attachments

EDWARD P. MANGANO  
County Executive



COUNTY OF NASSAU  
OFFICE OF THE NASSAU COUNTY EXECUTIVE  
1550 Franklin Avenue  
Mineola, New York 11501

**MESSAGE AND RECOMMENDATION OF  
THE COUNTY EXECUTIVE AT A REGULAR  
MEETING OF THE COUNTY LEGISLATURE**

June 25, 2015

COUNTY LEGISLATURE  
NASSAU COUNTY  
THEODORE ROOSEVELT EXECUTIVE & LEGISLATIVE BUILDING  
MINEOLA, NEW YORK

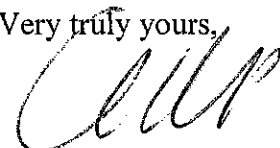
HONORABLE MEMBERS:

Nassau County has received revenue in connection with the Department of Parks, Recreation & Museums.

In order to make the monies available for the Department of Parks, Recreation & Museums, it is requested that the funds be appropriated and credited to the department code as set forth in the attached proposed ordinance.

Therefore, pursuant to Section 307 of the County Government Law of Nassau County, I recommend that the attached supplemental appropriation ordinance be adopted by the County Legislature.

Very truly yours,

  
for EDWARD P. MANGANO  
County Executive  
Nassau County

COUNTY OF NASSAU

*Inter-Departmental Memo*

(N)

**To:** Richard Haemmerle, Office of Grants Management

**From:** Linda Barker, Accountant II  
Department of Parks, Recreation & Museums

BA PK 1500000.1

**Date:** June 15, 2015

**Subject:** Request for Supplemental Appropriation  
American Armor Museum PKGRTAMX5NYS ✓

Please prepare the necessary paperwork to establish a supplemental appropriation (FY 2015) in the amount of \$100,000 and allocate as follows:

<u>Expenditures</u>	<u>Description</u>	<u>Appropriation</u>
DE547 ✓	Contractual Services	\$ 100,000
	<b>Total Expenditures</b>	<b>\$ 100,000</b>

Please also request the Comptroller's Office to credit revenues for FY 2015 as follows:

<u>Revenue Source</u>	<u>Description</u>	<u>Revenue Amount</u>
R1001 ✓	State Aid	\$100,000
	<b>Revenue Total</b>	<b>\$100,000</b>

To appropriate funds that have been granted by NYS for the American Armor Museum to be used for a portion of the cost of construction of curbs and pedestrian walkways at the Museum of American Armor.

cc: Eileen Krieb, Museum Administration  
John DiFiglia, Accounting  
Matthew Ronan, OMB



# Empire State Development

September 2, 2014

Eileen Krieb  
Assistant to Commissioner  
Nassau County Department of Parks, Recreation and Museums  
1899 Hempstead Turnpike  
East Meadow, NY 11554

Re: Museum of American Armor Heritage Tourism Capital, Project #Y556

Dear Ms. Krieb:

On behalf of the New York State Urban Development Corporation doing business as Empire State Development (ESD), I am pleased to inform you that at the recommendation of ESD's President & Chief Executive Officer, Kenneth Adams, the ESD Directors have approved \$100,000 in assistance for the project referenced above.

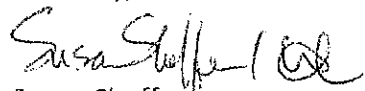
This approval is contingent upon the holding of a public hearing and the approval of the Public Authorities Control Board.

We have enclosed a **draft** Grant Disbursement Agreement (the "Agreement") for your review, which contains a copy of the materials that were presented for approval by the Directors. ESD will sign and send two original copies of the Agreement to you for your execution once all approvals mentioned above have been achieved. Please review this draft Agreement and contact Jared Walkowitz, your Project Manager, at (212) 803-3659 within 45 days to proceed to the next step. **Do not sign this draft Agreement.**

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We look forward to working with you.

Sincerely,



Susan Shaffer  
Senior Vice President, Loans and Grants

cc: Jared Walkowitz  
Andrea Lohneiss

**Museum of American Armor Heritage Tourism Capital (Y556)**  
August 27, 2014

General Project Plan

**Grantee:** Nassau County Department of Parks, Recreation and Museums  
("Nassau County DPRM" or the "Organization")

**ESD Investment:** A grant of up to \$100,000 to be used for a portion of the cost of construction of curbs and pedestrian walkways.

**Project Location:** 1303 Round Swamp Road, Bethpage, Nassau County

**Proposed Project:** Construction of curbs and pedestrian walkways for the Museum of American Armor (the "Museum")

**Project Type:** Capital improvements

**Regional Council:** The Long Island Regional Council has been made aware of this item.

**Background:**

Industry – Nassau County DPRM manages over 70 parks, preserves, museums, historic properties and athletic facilities on approximately 5,000 acres of land.

Organizational History – Established in 1944, Nassau County DPRM plays a vital role in the preservation of open space for physical activity and the enhancement of the quality of life for residents and visitors of the Nassau County region. The Organization manages museums such as the African American Museum and the Cradle of Aviation Museum as well as an ice skating rink, little league fields, a swimming facility and an 18-hole golf course.

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Ownership – Government Agency

ESD Involvement – A \$100,000 appropriation was included in the FY 2014-2015 New York State budget.

Past ESD Support – This is the Grantee's first project with ESD.

**The Project:**

Completion – June 2014

Activity – The project involved construction of curbs and pedestrian walkways for a new 25,000-square-foot facility, the Museum of American Armor, at 1303 Round Swamp



**Museum of American Armor Heritage Tourism Capital (Y556)**

August 27, 2014

Road in Bethpage, NY. The new Museum will create a facility that pays tribute to the American vehicles that were used in the liberation of Europe and the Pacific during World War II.

Results – The Museum will provide visitors an opportunity to view vehicles and equipment that were used in World War II. Nassau County anticipates approximately 35,000 visitors annually.

Financing Uses	Amount	Financing Sources	Amount	Percent
Curbs and Pedestrian Walkways	\$113,088	ESD Grant	\$100,000	88%
		Grantee Equity	13,088	12%
Total Project Costs	\$113,088	Total Project Financing	\$113,088	100%

Grantee Contact – Eileen Krieb, Assistant to Commissioner  
1899 Hempstead Turnpike  
East Meadow, NY 11554  
Phone: (516) 572-0378

<u>Project Team</u> –	Project Management	Jared Walkowitz
	Contractor & Supplier Diversity	Vikas Gera
	Design & Construction	Barbara Helm
	Environmental	Soo Kang

**Financial Terms and Conditions:**

1. Upon execution of the grant disbursement agreement, the Grantee shall reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. ~~The Grantee will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.~~
3. Up to \$100,000 will be disbursed to Grantee upon, documentation of curbs and pedestrian walkways project costs totaling \$113,088, assuming that all project approvals have been completed and funds are available. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require as evidenced by a certificate of occupancy, and compliance with the Design & Construction requirements. All project expenditures must have been incurred after April 1, 2013, the date that the New York State budget, in which the project is authorized, was passed. The final ten percent (10%) of the Grant shall not be disbursed by ESD until all of the tasks and reports required have been completed to ESD's satisfaction.

**Museum of American Armor Heritage Tourism Capital (Y556)**  
August 27, 2014

4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$100,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.

**Environmental Review:**

Pursuant to the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the approval of funding for the proposed project, the Directors made a Determination of No Significant Effect on the Environment at their meeting of August 22, 2013. This determination addressed all aspects of the proposed project. Therefore, no further environmental review is required in connection with this action.

**Non-Discrimination and Contractor & Supplier Diversity:**

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBEs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30%. The overall goal shall include a Minority Business Enterprise ("MBE") Participation Goal of 20% and a Women Business Enterprise ("WBE") Participation Goal of 10% related to the total value of ESD's funding.

**Statutory Basis – Local Assistance:**

The project was authorized in the 2013-2014 New York State budget and reappropriated in the 2014-2015 New York State budget. No residential relocation is required as there are no families or individuals residing on the site.

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**Disclosure and Accountability Certifications:**

The Grantee has provided ESD with the required Disclosure and Accountability Certifications. Grantee's certifications indicate that Grantee has no conflict of interest or good standing violations and, therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

## EMPIRE STATE DEVELOPMENT SUB-RECIPIENT AGREEMENT

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement") made and entered as of the date on which this Agreement is last executed by the parties hereto, by and between the **COUNTY OF NASSAU**, a municipal corporation having its principal offices at One West Street, Mineola, New York 11501 (hereinafter referred to as the "County"), acting on behalf of the **County Department of Parks, Recreation and Museums**, having its principal office at Administrative Building, Eisenhower Park, East Meadow, NY 11554 (hereinafter referred to as "Parks") and the **Museum of American Armor**, with its principal office at 11303 Round Swamp Road, Old Bethpage, NY 11804 (hereinafter referred to as "Armor")

### WITNESSETH:

WHEREAS, Armor has completed a project (the "Project") the construction of curbs and pedestrian walkways for the facility known as the Museum of American Armor (the "Museum");

WHEREAS, the Project qualifies for New York State aid (collectively, the "Aid") pursuant to the Program administered by the New York State (the "State") Urban Development Corporation d/b/a Empire State Development ("ESD") in accordance with the Grant Disbursement Project Agreement (the "Project Agreement") annexed hereto and hereby made a part hereof as Exhibit "A"; and

WHEREAS, in order to facilitate distribution of the Aid, Armor has requested and the County has agreed to act as signatory on the Project Agreement between the County and the ESD acting on behalf of the State so that the Aid may be received by the County and "passed-through" to Armor so that Armor may carry out the Project in accordance with all terms and conditions contained in this Agreement and the Project Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term. This Agreement shall commence the date which this Agreement is last executed by the parties hereto (such date, the "Commencement Date") and terminate upon the latter of (i) the termination of the Project Agreement or (ii) completion of the Project.

2. Payments.

(a) Aid Pass-Through. Subject to the terms and conditions contained in this Agreement, the County shall forward all Aid received from the State (\$100,000.00) pursuant to the Project Agreement to Armor within a reasonable time after receipt thereof.

(b) Vouchers; Voucher Review, Approval and Audit. Payments shall be made to Armor in arrears and shall be contingent upon (i) Armor submitting a claim voucher (the "Voucher") in a form satisfactory to the County, that (a) states with reasonable specificity the work performed and the payment requested as consideration for such services, (b) certifies that the work performed and the payment requested are in accordance with this Agreement and the Project Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, and (ii) review, approval and audit of the Voucher by the Department and/or the County Comptroller or his or her duly designated representative (the "Comptroller").

(c) Timing of Payment Claims. Armor shall submit claims no later than three (3) months following the performance of work that is the subject of the claim and no more frequently than once a month.

3. Project Agreement.

(a) All applicable terms and conditions of the Project Agreement are incorporated into and made a part of this Agreement as if: Armor was the County acting as "Municipality/Sponsor" thereunder. Armor hereby assumes all applicable obligations of the County under the Project Agreement, and the covenants, warranties, representations, waivers and indemnifications made by the County to the State, or any other party, under the Project Agreement are hereby made by Armor to the County all as if the same were fully rewritten herein. Armor shall not commit or suffer any act or omission that will violate any of the provisions of the Project Agreement.

(b) Armor agrees that wherever the Project Agreement requires a submission or notice to be provided by the County, as Municipality/Sponsor, to the State, Armor shall provide such submission to both the County and the State.

(c) Armor agrees that where any provision of the Project Agreement requires County to indemnify the State, or any other party, Armor agrees to indemnify, defend and hold harmless County and the State.

4. Compliance with Law.

(a) Generally. Armor shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. In furtherance of the foregoing, Armor is bound by and shall comply with the terms of Appendix "EE" attached hereto and hereby made a part hereof. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Nassau County Living Wage Law. Pursuant to LL 1-2006, as amended, and to the extent that a waiver has not been obtained in accordance with such law or any rules of the County Executive, Armor agrees as follows:

- (i) Armor shall comply with the applicable requirements of the Living Wage Law, as amended;
- (ii) Failure to comply with the Living Wage Law, as amended, constitutes a material breach of this Agreement, such breach being determined solely by the County. Armor has the right to cure such breach within thirty (30) days of receipt of notice of breach from the County. In the event that such breach is not timely cured, the County may terminate this Agreement as well as exercise any other rights available to the County under applicable law.
- (iii) On a yearly basis, Armor shall provide the County with any material changes to its Certificate of Compliance, attached hereto and hereby made a part hereof as Appendix "L."

5. Indemnification. The County's role in the Project shall be limited to acting as a "pass-through" so that funds may be provided to Armor. Accordingly, the County shall have no responsibility or liability to any person or entity for any element of the Project. In furtherance of the foregoing, Armor shall hold harmless, indemnify and defend the County, its employees, officers and agents from any and all claims and damages arising out of or in connection with performance under this Agreement or the Project Agreement, provided, however, that Armor shall not be responsible for that portion, if any, of a loss that is caused by the negligence or willful misconduct of the County. The provisions of this Section shall survive the termination of this Agreement.

6. No County Liability Beyond Aid. The County shall have no liability under this Agreement provide funding to Armor beyond the Aid actually received by the County and appropriated or otherwise lawfully available for this Agreement.

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7. Reporting Requirements. Armor shall provide to the County a full report and accounting of the use of the Aid within ninety (90) days of receipt and every sixty (60) days thereafter throughout the term of this Agreement. Such report shall contain a certification, by a person duly authorized to represent Armor that the Project has been satisfactorily implemented and sufficiently outlines the progress and results of the Project.

8. Recordkeeping Requirements. Armor shall maintain and retain, for a period of six (6) years following the completion of the Project, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Such Records shall at all times be available for audit and inspection by the County, the Comptroller, any other governmental Armor with jurisdiction over the provision of services hereunder

and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

9. Use of Aid

(a) Armor agrees to the use the Aid solely toward expenses associated with the Project and for no other purpose, all in accordance with all terms and conditions contained in this Agreement.

(b) Any portion of the Aid not spent in accordance with this Agreement shall be returned to the County or the State, as directed by the County.

(c) The County reserves the right to require the return of any portion of the Aid and terminate this Agreement at any time in the event that Armor fails to comply with the terms and conditions contained in this Agreement.

10. Amendments to the Agreement. This Agreement may not be amended without the prior written consent of the Commissioner of the Department or his or her duly designated deputy (the "Commissioner").

11 No Arrears or Default. The Armor is not in arrears to the County upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

12. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof.

IN WITNESS WHEREOF, the Armor and the County have executed this Agreement as of the date first above written.

MUSEUM OF AMERICAN ARMOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

NASSAU COUNTY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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PLEASE EXECUTE IN **BLUE** INK

STATE OF NEW YORK)  
COUNTY OF NASSAU )ss.:  
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On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me personally came \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of \_\_\_\_\_; that he or she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto by Armor of the board of directors of said corporation.

NOTARY PUBLIC

STATE OF NEW YORK)  
COUNTY OF NASSAU )ss.:  
\_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me personally came \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of \_\_\_\_\_; that he or she is a Deputy County Executive of the County of Nassau, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto.

NOTARY PUBLIC



## EXHIBIT “A”

### Grant Disbursement Project Agreement

Appendix L

Certificate of Compliance

In compliance with Local Law 1-2006, as amended (the "Law"), the Contractor hereby certifies the following:

1. The chief executive officer of the Contractor is:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Telephone Number)

2. The Contractor agrees to either (1) comply with the requirements of the Nassau County Living Wage Law or (2) as applicable, obtain a waiver of the requirements of the Law pursuant to section 9 of the Law. In the event that the Contractor does not comply with the requirements of the Law or obtain a waiver of the requirements of the Law, and such Contractor establishes to the satisfaction of the Department that at the time of execution of this Agreement, it had a reasonable certainty that it would receive such waiver based on the Law and Rules pertaining to waivers, the County will agree to terminate the contract without imposing costs or seeking damages against the Contractor

3. In the past five years, Contractor \_\_\_\_\_ has \_\_\_\_\_ has not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed against the Contractor, describe below:

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4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action \_\_\_\_\_ has \_\_\_\_\_ has not been commenced against or relating to the Contractor in connection with federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

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5. Contractor agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Name of Chief Executive Officer

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

**Appendix "EE"**  
**Equal Employment Opportunities for Minorities and Women**

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

(a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.

(e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

(f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.

(g) Contractors for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved

by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.

(h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.

(i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.

(j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.

(k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.

(l) The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:

- a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
- b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrators award and recommendations, shall file a determination of such matter and shall cause a copy of such determination

to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules ("CPLR").

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

As used in this Appendix EE the term "Best Efforts Checklist" shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

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As used in this Appendix EE the term "County Contract" shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term "County Contract" does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term "County Contractor" means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a

County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE the term "County Contractor" shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Appendix EE "Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises" shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor's affidavit with a notary's signature and stamp shall be required as part of the documentation.
  - b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation
  - c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation
  - d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
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- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
  - f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation

- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term "Executive Director" shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term "Subcontract" shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term "Subcontractor" shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

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